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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,702	12/20/2004	Thomas Salutzki	5255-43PUS	1014
27799	7590	08/15/2007		
COHEN, PONTANI, LIEBERMAN & PAVANE			EXAMINER	
551 FIFTH AVENUE				WILLIAMS, THOMAS J
SUITE 1210			ART UNIT	PAPER NUMBER
NEW YORK, NY 10176			3683	
			MAIL DATE	DELIVERY MODE
			08/15/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/518,702	SALUTZKI, THOMAS
Examiner	Art Unit	
Thomas J. Williams	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 25 June 2007.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 9-21 is/are pending in the application.  
4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 9-16 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 20 December 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All   b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date . . .  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application  
6)  Other: . . .

## **DETAILED ACTION**

1. Applicant's election of Group I in the reply filed on June 25, 2007 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 9-16 are rejected under 35 U.S.C. 102(e) as being anticipated by US 6,618,899 to Ginzel et al.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37

CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Re-claim 9, Ginzel et al. disclose an apparatus for opening and closing a door leaf, comprising: a housing made of a polyoxymethylene plastic (see column 7 lines 18-37), the housing has a recess; a piston 6 made of polyoxymethylene (see column 2 lines 62-66), the piston has a toothed rack 11; a closing shaft 3 comprises a pinion 12 that engages the rack 11 (see figure 4); a closing spring 13 is arranged in the recess and acts on the piston.

Re-claim 10, the piston and housing are formed by injection molding, see column 3 lines 33-37.

Re-claim 11, Ginzel et al. incorporates by reference in its entirety US 4,019,220 which discloses a piston and rack apparatus, wherein the rack is made of metal and the piston is molded around the rack.

Re-claims 12 and 13, the housing is fitted with bearing shells 16, the bearings are made of polyoxymethylene plastic; the bearing shells are press fitted into the housing and welded using ultrasonic welding, see column 9 lines 11-18.

Re-claims 14-16, end plugs 18 and 19 are made of polyoxymethylene plastic and attached by ultrasonic welding; the openings at each end are broadly interpreted as hydraulic openings which are subsequently sealed with caps 18 and 19.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/36255 to Ginzel et al. in view of US 6,077,908 to Yahiro.

Re-claims 9-16, Ginzel et al. teach an apparatus for opening and closing a door leaf, comprising: a housing made of plastic, the housing has a recess; a piston 6 made of plastic, the piston has a toothed rack 11; a closing shaft 3 comprises a pinion 12 that engages the rack 11 (see figure 4); a closing spring 13 is arranged in the recess and acts on the piston; the piston and housing are formed by injection molding (see abstract); Ginzel et al. incorporates by reference in its entirety US 4,019,220 which discloses a piston and rack apparatus, wherein the rack is made of metal and the piston is molded around the rack; the housing is fitted with bearing shells 16, the bearings are made of plastic; the bearing shells are press fitted into the housing and attached by ultrasonic welding (a machine translation confirms this); end plugs 18 and 19 are made of plastic and are attached by ultrasonic welding; the openings at each end are broadly interpreted as hydraulic openings which are subsequently sealed with caps 18 and 19.

Ginzel et al. teach the type of plastic used is preferably glass fiber or carbon fiber reinforced, but fail to teach the specific type of plastic used, such as a polyoxymethylene plastic.

Yahiro teaches a glass fiber reinforced polyoxymethylene plastic used for making a variety of products, such as brake pistons, caps, housings and other various structures, see column 8 lines 57-67 to column 9 lines 1-51. The polyoxymethylene plastic provides excellent heat stability and weatherability, and as such is useful for outdoor conditions, as would be experienced by a door closing mechanism. It would have been obvious to one of ordinary skill

Art Unit: 3683

in the art to have manufactured the various parts of Ginzel et al. from a polyoxymethylene plastic as taught by Yahiro, thus providing a durable product resistant to heat and inclement weather.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lee and Lucas each teach a door closer made of a plastic/polymeric material.

7. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128.

The examiner can normally be reached on Wednesday-Friday from 6:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi, can be reached at 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

**THOMAS J. WILLIAMS  
PRIMARY EXAMINER**

TJW

August 10, 2007

*Thomas Williams*  
AU 3683  
8/10/07